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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARWIN LICONA,

Defendant.

CASE NO. 3:24-mj-70008 MAG

MEMORANDUM IN SUPPORT OF UNITED
STATES' MOTION FOR DETENTION

Date: January 10, 2024

Time: 10:30 AM

Court: Hon. Lisa J. Cisneros

I. INTRODUCTION

Darwin Licona is—by his own admission— a professional drug dealer. He has no discernible ties to the community aside from selling drugs, as evidenced by the conduct at issue here where he was found with nearly 2.5 pounds of fentanyl and admitted being a drug dealer for the past 3 years. The defendant is both a danger to the community and a significant flight risk. He cannot overcome the presumption that there is no condition or combination of conditions that can secure his appearance before the Court or provide for the safety of the community. He has listed no viable release address and no viable bail resources. In addition, he has multiple narcotics arrests and two prior orders of removal. He was arrested last week based on a state search warrant that uncovered a significant amount of drugs

1 in the common area of a shared residence where he lived, including 53.96 pounds of fentanyl, 3.7
2 pounds of methamphetamine, 16,316 counterfeit Xanax pills, 59.4 grams of heroin, 121 M30 fentanyl
3 pills, and \$13,276 in US currency. Accordingly, the government requests that he be detained pending
4 trial.

5 II. OFFENSE CONDUCT

6 On January 5, 2024, Mr. Licona was charged by Complaint with one count of possession with
7 intent to distribute fentanyl in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C). The conduct at issue
8 occurred on June 16, 2023. On that day at approximately 12:47 pm, two officers with the Oakland
9 Police Department were conducting a patrol when they noticed a 2016 Dodge Challenger parked near
10 the 6100 block of Bancroft Avenue. The officers observed the driver with his head down on the steering
11 wheel. The officers conducted welfare check on the driver. The officers observed in plain view drug
12 paraphernalia, including a straw with burnt residue, as well as multiple small plastic bags suspected to
13 be fentanyl. The defendant was in the right rear passenger seat. The fentanyl was near the right
14 passenger seat in the immediate vicinity of the defendant.

15 The defendant was searched. Officers found the following in the defendant's front left and right
16 pant pockets: \$1,830 in U.S. currency, one plastic bag containing multiple dosage units of counterfeit
17 pills marked with M30 (suspected to contain fentanyl), and approximately eight clear plastic bags
18 containing suspected fentanyl. A search of the vehicle recovered four Ziplock bags containing
19 suspected methamphetamine, approximately 12 plastic bags containing suspected fentanyl, one plastic
20 bag containing multiple dosage units of Xanax pills, two black digital scales containing residue, and one
21 plastic straw with burnt residue at the end. The drugs were sent to the DEA Western Laboratory, where
22 suspected fentanyl tested positive as fentanyl with a weight of 1155.6 grams (plus or minus 0.9 grams)
23 (net weight). Cocaine in the amount of 73.8 grams (net weight) was also found.

24 Licona later told officers that the narcotics in his pocket were a mix of fentanyl, cocaine, Xanax,
25 and methamphetamine. He told officers that he sells 1 pill of Xanax for \$1.00, 1 gram of fentanyl for
26 \$20.00, 1 gram of cocaine for \$20.00, and 1 gram of methamphetamine for \$5.00. He stated that he has
27 been selling drugs for about 3 years, and that the scales found in the car were used to weigh cocaine. He
28 also stated that some of the drugs located in the rear of the vehicle belonged to him, and that he was

1 currently under the influence of methamphetamine and fentanyl.

2 III. LEGAL STANDARD

3 This Court can detain a defendant pretrial without bail where “no condition or combination of
4 conditions will reasonably assure the appearance of the person as required and the safety of any other
5 person and the community.” 18 U.S.C. § 3142(e)(1). Detention is appropriate where a defendant is
6 either a danger to the community or a flight risk. *Id.* at § 3412 (b), (c). A finding that a defendant is a
7 danger to the community must be supported by clear and convincing evidence. *Id.* at § 3142(f)(2)(B).

8 A finding that a defendant presents a risk of non-appearance must be supported by a
9 preponderance of the evidence. *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985).
10 The Court considers four factors to determine whether the pretrial detention standard is met: (1) the
11 nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant;
12 (3) the defendant’s history and characteristics, including his character, physical and mental condition,
13 family and community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and
14 record concerning appearance at court proceedings, as well as whether the crime was committed while
15 the defendant was on probation or parole; and (4) the nature and seriousness of the danger to any person
16 or to the community that would be posed by the defendant’s release. 18 U.S.C. § 3142(g); *United States*
17 *v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986).

18 Finally, the law presumes that no condition or combination of conditions will reasonably assure
19 the appearance of the defendant, and the safety of the community, when the defendant is charged with
20 an offense under the Controlled Substances Act for which the maximum term of imprisonment is ten
21 years or more. 18 U.S.C. § 3142(e)(3)(A). In such cases, the burden of production shifts to the
22 defendant. *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008). Even if the defendant rebuts the
23 presumption, the presumption is not erased; instead, it remains in the case as an evidentiary finding
24 militating against release that is to be weighted along with other relevant factors. *See id.*

25 IV. ARGUMENT

26 A. The Defendant Faces a Rebuttable Presumption in Favor of Detention.

27 The defendant is charged with one count of distributing fentanyl in violation of 21 U.S.C. §§
28 841(a)(1) & (b)(1)(C). Given the fentanyl distribution charge, this offense carries a maximum term of

1 imprisonment of ten years or more under the Controlled Substances Act. As a result, there is a
2 rebuttable presumption that no condition or combination of conditions will reasonably assure the
3 appearance of the person as required and the safety of the community. *See* 18 U.S.C. § 3142(e)(3)(A).
4 As described below, the defendant will be unable to overcome this presumption.

5 B. The Defendant Cannot Overcome the Presumption that He Is a Flight Risk.

6 The defendant is a foreign national with no verified permanent employment other than being a
7 professional drug dealer. He is not a United States citizen and faces deportation if convicted. He has
8 already been removed once in 2016 and once in 2019. His removal history shows that he is undeterred
9 by court orders and will not be amenable to pretrial release and conditions imposed by the court to
10 assure pretrial attendance. In addition, the defendant has numerous arrests for narcotics, including a
11 2019 arrest by SFPD, and three arrests by SFPD in 2020 (01/10, 5/17, 5/27). It is the government's
12 understanding that the May 27, 2020 charge is set for trial on two counts, one a narcotics charge, and
13 that the defendant committed the offense while on bail. In that case, the defendant also falsely
14 identified himself to avoid his prior arrest from coming up (resulting in a PC 148.9(a) charge). The
15 defendant is also subject to an active stay away order (150 yards from the intersection of Hyde and
16 Golden Gate) until 2026. Clearly, the defendant's conduct has not been deterred by repeated
17 interactions with law enforcement.

18 In addition, Mr. Licona has identified no viable or permanent address to Pretrial Services. He
19 notes staying at a friend's home in Oakland, but could not recall the specific address, and at other times
20 has been transient. He lived in Honduras until 2018. He also has a Honduran passport. All of these
21 factors, when taken together, demonstrate that the defendant poses a significant flight risk and has strong
22 incentives to flee.

23 C. Defendant Cannot Overcome the Presumption that He is a Danger to the Community.

24 The defendant is also a significant danger to the community. In the instant offense, he was found
25 with 1,155.6 grams of fentanyl (approximately 2.5 pounds). He also admitted to selling drugs, advising
26 officers that the narcotics that were in his pocket were a mix of fentanyl, cocaine, Xanax, and
27 methamphetamine. He also outlined his drug dealing for the officers, telling them the specific amounts
28 he sells and what he charges for those amounts. And at the time of the June conduct, he advised officers

1 that he was under the influence of methamphetamine and fentanyl.

2 In addition, he was also arrested pursuant to a state search warrant that uncovered a significant
3 amount of drugs in the common area of a shared residence where he lived, including around 24 kilos of
4 fentanyl (53.96 pounds), 3.7 pounds of methamphetamine, 16,316 counterfeit Xanax pills, 59.4 grams of
5 heroin, 121 M30 fentanyl pills, and \$13,276 in US currency.

6 V. CONCLUSION

7 The Court should order the Defendant detained pending trial because he cannot overcome the
8 presumption that there are no conditions that will reasonably assure his appearance at court proceedings
9 or ensure the safety of the community.

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12 DATED: January 11, 2024

Respectfully submitted,

13 ISMAIL J. RAMSEY
14 United States Attorney

15 /s/
16 SOPHIA COOPER
17 Assistant United States Attorney
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